



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: David Robledo

File: B-233946.2

Date: December 14, 1989

DECISION

The issue in this case is whether an Office of Personnel Management (OPM) regulation may be waived in setting Mr. David Robledo's rate of basic pay upon his reinstatement with the Bureau of Reclamation.^{1/} For the following reasons, the regulation may not be waived.

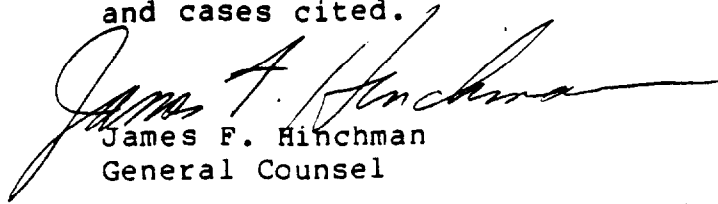
When Mr. Robledo was employed previously, the agency paid him a special rate of pay in excess of the general schedule pay rate for his grade and step level under the authority in 5 U.S.C. § 5303 (1982). His employment was terminated, and when he was reinstated the agency applied 5 C.F.R. § 531.203(d)(3) (1988) in determining his highest previous rate of pay. That regulation provides that where an employee's rate of pay was established under 5 U.S.C. § 5303, the highest previous rate is the scheduled rate rather than the special rate. As a result, when Mr. Robledo was reinstated, his pay was properly reduced from \$36,819 to \$35,065. Although the regulation further provides that an agency may apply for approval to use the special rate as the highest previous rate under certain specified circumstances, the Bureau declined to apply for such an exception in this case, presumably because the special circumstances did not exist.

OPM issued the regulation contained in 5 C.F.R. § 531.203(d)(3) pursuant to the authority provided in 5 U.S.C. §§ 5115 and 5538. Therefore, the regulation has the force and effect of law. Under these circumstances, there is no authority for the Bureau of Reclamation or our Office to waive the regulation. See Jon P. Kindice,

^{1/} The Bureau of Reclamation, United States Department of the Interior, requested a decision on this question, reference D-7520.

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B-198627, Nov. 7, 1980, affirmed B-198627, Oct. 20, 1981,
and cases cited.



James F. Hinchman
General Counsel